[ORIGINAL CIVIL JURISDICTION]
TERRELL, J.
March 6, 1935.

RE NEO CHIN SIEW.

[SINGAPORE BANKRUPTCIES Nos. 454 of 1929 and 308 of 1933]

Ordinance No. 44 (Bankruptcy), S. 67—S. 103—S. 132.

A debtor was adjudicated bankrupt on 30th August, 1929 and again on 23rd June 1933. The debtor submitted proposals for compositions in both bankruptcies; both schemes were accepted by the creditors and approved by the Court. The Receiving Orders were rescinded and and the adjudications annulled. Moneys came into the hands of the Official Assignee which were more than sufficient to pay all creditors and the surplus was paid to the debtor. The Official Assignee paid all creditors who had proved but retained in his hands $650/- to pay four creditors in the first bankruptcy who had been mentioned in the debtor's statement of affairs but who did not prove and who cannot now be found. The Official Assignee applied to the Court for directions as to whether this $650/- was in the circumstances vested in and payable to the debtor.

Held, that the money was earmarked for the four creditors and was in the nature of unclaimed dividends and the Official Assignee's duty was to act in accordance with the provisions of Ordinance 44 (Bankruptcy) S. 132.

Summons.

In this Bankruptcy the Official Assignee applied by Summons for directions as to payment of moneys in his hands. The facts appear sufficiently from the Judgment.

E. B. Williams, Official Assignee in person.
Chidson for the Debtor.
A. Williams, for the Attorney General.

Cur. Ad. Vult.

TERRELL, J.—The Debtor was adjudicated bankrupt on the 30th August, 1929. A second bankruptcy petition was presented in 1933 and the Debtor was again adjudicated bankrupt on the 23rd June, 1933 (No. 308 of 1933).

The Debtor was entitled to sums aggregating $11,050 from the Eastern Extension Telegraph Company Limited. Without the question whether these sums vested in the Official Assignee being decided, they were between August 1933 and June 1934, by arrangement with the Debtor, transferred to the Official Assignee and paid to a suspense account.

In May, 1934, the Debtor submitted compositions for the approval of his creditors in both bankruptcies. The compositions provided for the creditors in the first bankruptcy receiving 100% and the creditors in the second bankruptcy 70%. Both schemes were accepted by the creditors and were approved by the Court on the 8th June, 1934. On the same day orders were made rescinding the Receiving Orders and annulling the Adjudication Orders. The amounts necessary for paying the two compositions were provided out of the $11,050 which was in the Official Assignee's hands as above mentioned. The balance after providing for fees and the expenses of the Bankruptcy Office, was paid to the Debtor.

The Creditors who had proved were duly paid, but there remains in the hands of the Official Assignee the sum of $650/- payable to four creditors in the first bankruptcy who had been mentioned in the Debtor's statement of affairs, but who did not prove and cannot now be found. The Official Assignee has applied to the Court for directions as to whether this $650 is in the circumstances vested in and payable to the Debtor.

I am not concerned with the second bankruptcy in which all the creditors have accepted a composition and have been paid. I only mention this because Mr. A. Williams, on behalf of the Attorney-General, tried to suggest that there had been non-disclosure to the creditors of the second bankruptcy which resulted in their acceptance of a composition of 70%. I can only say that there is no evidence of this whatsoever, and I accept without qualification the statements in the affidavit of Mr. E. B. Williams dated the 23rd January, 1935, and the contents of which I have summarised above.

The composition was proposed and accepted by the creditors under the provisions of section 26 (1) of the Ordinance. The scheme was approved by the Court and the bankrubtcy was annulled under section 26 (2). Section 26 (1) after stating that the creditors may resolve to entertain a proposal for a composition, continues:

> "and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition scheme entertained at the first meeting of creditors."

The effect of these words is to apply the provisions of section 18 so far as applicable. Sub-sections 16 and 17 of section 18 apply the provisions of Parts III and IV of the Ordinance as if the assignee or trustee of the composition were an assignee in bankruptcy. Under these sub-sections certain other consequences ensue which are relevant to a composition under section 18(1) but not to a composition under section 26 with which these proceedings are concerned.

The introduction of Part III makes section 67 applicable. This section provides that the bankrupt shall be entitled to any surplus remaining after payment in full of his creditors with interest as by the Ordinance provided and the costs, charges and expenses of the proceedings under the bankruptcy petition.

In connection with a composition I think that the surplus would belong to the bankrupt when a composition providing for payment of less than 100% of the debts had been approved by the Court.

Two other sections of the Ordinance should be noticed. Section 103 (1) provides for annulment on proof that the debts have been paid in full and section 103 (4) provides *inter alia* that any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court. This sub-section, however, commences with the words "For the purposes of this section." The words are not therefore of general application. Again the annulment was not applied for under section 103. When the Debtor is in a position to pay his creditors 100%, no doubt the section provides an alternative procedure, but in fact the annulment was made under section 26, and in my opinion section 103 has no application whatever.

Section 132, however, is of importance, as it prescribes the duties of the Official Assignee "under any bankrupcty, composition or scheme pursuant to the Ordinance" with respect to unclaimed dividends. Sub-section (1) provides that any dividend unclaimed for six months shall be paid into Court for credit to the Bankruptcy Estates Account. Sub-section (3) provides in effect that after 5 years such unclaimed dividends shall be transferred to the general revenues of the Colony, subject however to the subsequent admission of any claims which have been established to the satisfaction of the Official Assignee.

In view of the opening words of section 132 (1) and of the provisions of section 18 (16), I have no doubt that for the purpose of section 132 the Official Assignee as trustee of a composition is in exactly the same position and has exactly the same duties as if he were the Official Assignee of the estate of a bankrupt.

If the Court approves a composition under section 18, then by virtue of sub-section 10 the approval may be testified by Seal of the Court being attached to the instrument containing the terms of the composition or scheme or by the terms being embodied in an Order of the Court. The form of the Order in the latter case is Form 66 and I think that this form is equally applicable in the case of a composition under section 26. In fact, however, the Order made in this case on the 8th June, 1934, does not follow Form 66, and although I think it would have been more correct if it had done so, the Order in fact approves the composition by reference to the Official Assignee's report dated the 5th May, 1934, and on referring to that there can be no doubt what the proposed terms of the composition were.

The position thus is that a Debtor may compound with his creditors in one of three ways: (1) before bankruptcy by a deed of arrangement (section 20 of the Ordinance), (2) at the first meeting of creditors under section 18, and (3) at any later time under section 26. In cases (2) and (3) there may either be a composition deed which the Court approves by setting its Seal upon it, or alternatively the terms of the composition may be set out in the Order approving it. The latter method is almost invariably followed in cases (2) and (3), but the effect of a scheme of composition approved by the Court is exactly the same as if a formal deed had been entered into with the creditors and had received the Court's Seal.

Now the proposal for a composition which was ultimately approved, is set out in para. 4 of the Official Assignee's affidavit of the 23rd January, 1935. Paragraph (2) provides *inter alia* that the bankrupt will pay all his unsecured creditors in full satisfaction of the debts due to them a composition of 100%. Paragraph (3) provides that the Official Assignee shall be the trustee to distribute the composition.

The effect of this was to make the Official Assignee as a trustee for the particular creditors who had proved or who had been admitted as creditors in the bankrupt's statement of affairs, just as effectively as if he had been appointed by a deed which declared an express trust on their behalf. The position would be exactly the same if the Debtor had applied under section 103 and had under section 103 (4) paid into Court money earmarked for the debts of creditors who had not proved or could not be found. As Vaughan Williams, J. said in *In Re Robert Dennis*, L.R. (1895) 2 Q.B. 630 at p. 633; 2 Manson, at p. 395, in such circumstances the money is not paid into Court as security; it is paid into Court for the creditor whenever the creditor likes to come for it. So in this case the Official Assignee holds the $650 not for the bankrupt but for the creditors whenever they like to come for it. I do not say that the scheme of composition might not have provided that the missing creditors should prove within a specified period, and that if they failed so to prove, the amount of their debts should revert to the bankrupt. It is impossible to say whether the Court would have approved such a scheme or not, but in any case, the scheme did not so provide. The money is earmarked for these creditors, and is in the nature of unclaimed dividends, and the Official Assignee's duty is to act in accordance with the provisions of section 132.

I have been referred to *In re Keet*, L.R. (1905) 2 K.B. 666 as an authority for the proposition that a debtor has paid in full when he has paid the creditors who have proved. The proposition is only contained in the judgment of one of the members of the Court of Appeal; it was not necessary for the decision and I do not think I can rely on it as it appears to me to be opposed to the whole scheme of the Ordinance. Nor am I prepared to make an Order for payment out to the Debtor of the $650 upon his giving security for repayment on the lines of the Order made *In re Robert Dennis*, L.R. (1895) 2 Q.B. 630. The Order in that case was clearly discretionary and possibly in excess of the express powers given by the Ordinance. In any case section 132 (4) is different to the corresponding English section in that it provides for unclaimed dividends ultimately finding their way into the general revenue of the Colony. In view of that provision I should not feel justified in making an Order which would in effect defeat the express provisions of the Ordinance.

Order Accordingly.

Solicitors for the Debtor—*Allen & Gledhill.*

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

March 6, 1935.

RE ALEXANDER MAX HENDROFF.

[SINGAPORE BANKRUPTCY SUMMARY CASE No. 138 of 1925]

Annulment of bankruptcy — balance of moneys in hands of Official Assignee.

In this bankruptcy the Official Assignee received from various sources funds sufficient to pay in full all creditors who had proved and to leave in the hands of the Official Assignee after payment of such debts and costs &c., the sum of $817-03. According to the debtor's Statement of affairs there was a number of creditors whose debts amounted to $828 who had not proved their debts. On the 6th September, 1927 an order was made annulling the adjudication order and rescinding the receiving order. The Official Assignee then attempted to trace the other creditors who had not proved their debts up to that time but after all attempts had been made there still remained in his hands the sum of $495.03. Upon the debtor applying to the Official Assignee for payment to him of this sum.

Held, that the debtor had no interest in the said sum of $495-03 and that it should be dealt with as provided by S. 132 (3) of Ordinance No. 44 (Bankruptcy)

Summons.

In this Bankruptcy the Official Assignee applied by Summons for directions as to payment of moneys in his hands. The facts sufficiently appear from the Judgment.

E. B. Williams, Official Assignee in person.

Debtor in person.

A. Williams Attorney General.

Cur. Ad. Vult.

TERRELL, J.—In this case the Receiving and Adjudication Orders were made on the 15th May, 1925. Of the 16 creditors mentioned in the statement of affairs only 6 proved. Their debts without interest to the date of the receiving order amounted to $1,285.63. As the result of payments by the debtor from salary and from his Provident Fund, the Official Assignee had in hand by June, 1929, the sum of $2,250. This was sufficient to pay in full the creditors who had proved and to leave in the hands of the Official Assignee, after payment of costs, etc., the sum of $817.03 towards satisfaction of the creditors who had not proved. These debts according to the statement of affairs amounted to $828.

On the 26th August, 1929, the bankrupt applied for annulment of the bankruptcy and on the 3rd September, 1929, filed an affidavit stating that he had paid to the Official Assignee a sufficient sum to pay in full all his credtors with interest. This statement was not strictly accurate, but on the 6th September, 1929, an order was made annulling the adjudication and rescinding the receiving order.

On the 3rd January, 1931, the Official Assignee applied for directions as to the $817.03 remaining in his hands, and on the 23rd January, 1931, the Court made an order that the Official Assignee should continue to hold such sum and endeavour to trace the creditors. As a result one more creditor proved his debt and was paid the sum of $271.00. There accordingly remained in the hands of the Official Assignee the sum of $495.03 and the debtor now claims payment of this sum to him.

The annulment was made under section 103 of the Ordinance and could only be made if the Court were satisfied that the debt had been paid in full. Under section 103 (4) the debts, if not in fact paid to the creditors, must be provided for by payment into Court. The order annulling the adjudication must have been made on the assumption that this had been done and I do not think that the fact that the money paid in was not in fact enough affects the question now before the Court.

I fully considered the various provisions of the Ordinance in my judgment in Bankruptcy No. 454 of 1929. *re Neo Chin Siew*, which has also been delivered today, and there is no necessity to go over the same ground. In that case the money provided for creditors who had not proved remained in the hands of the Official Assignee as trustee of a composition. I pointed out that the terms of the composition might have provided for creditors proving within a certain time and that on their failure to do so, the money should revert to the debtor, but that as there was no such provision the money belonged to the creditors